

Project: 1997 Certificate of Participations Refunding
Administrative Services Building

Administering Agency: Placer County Treasurer Tax Collector

Contract No.

Contract Description:

PROFESSIONAL LEGAL SERVICES CONTRACT FOR SPECIAL COUNSEL
SERVICES RELATED TO THE REFUNDING OF CERTIFICATES OF
PARTICIPATION FOR THE ADMINISTRATIVE AND EMERGENCY SERVICES
BUILDING

SPECIAL COUNSEL SERVICES AGREEMENT

THIS AGREEMENT is made at Auburn, California, as of April 1, 2006 by and between the County of Placer, ("County"), and Orrick, Herrington & Sutcliffe, LLP, ("Special Counsel"), who agree as follows:

1. **Services.** Subject to the terms and conditions set forth in this Agreement, Special Counsel shall provide the services described in Exhibit A. Special Counsel shall provide said services at the time, place, and in the manner specified in Exhibit A.

2. **Payment.** County shall pay Special Counsel for services rendered pursuant to this Agreement at the time and in the amount set forth in Exhibit B. The payment specified in Exhibit B shall be the only payment made to Special Counsel for services rendered pursuant to this Agreement. Special Counsel shall submit all billings for said services to County in the manner specified in Exhibit B; or, if no manner be specified in Exhibit B, then according to the usual and customary procedures which Special Counsel uses for billing clients similar to County.

3. **Facilities, Equipment and Other Materials, and Obligations of County.** Except as set forth in Exhibit C, Special Counsel shall, at its sole cost and expense, furnish all facilities, equipment, and other materials, which may be required for furnishing services pursuant to this Agreement. County shall furnish Special Counsel only those facilities, equipment, and other materials, and shall perform those obligations listed in Exhibit C according to the terms and conditions set forth in Exhibit C.

4. **General Provisions.** The general provisions set forth in Exhibit D are part of this Agreement. Any inconsistency between said general provision and any other terms or conditions of this Agreement shall be controlled by the other term or condition insofar as it is inconsistent with the general provisions.

5. **Exhibits.** All exhibits referred to herein are attached hereto and by this reference incorporated herein.

6. **Time for Performance.** Time is of the essence, and, subject to County's compliance with Exhibit C and to the provisions of paragraph 3 of Exhibit D, failure of Special Counsel to perform any services within the time limits set forth in Exhibit A shall constitute material breach of this contract.

Executed as of the day first above stated:

COUNTY OF PLACER

By: _____
County Executive Officer

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: _____
Name: Samuel A. Sperry
Title: Attorney of Counsel

Approved As to Form

County Counsel

EXHIBIT A

SCOPE OF SERVICES

Special Counsel will provide bond counsel services to the County in connection with the refunding of the County's 1997 Certificates of Participation as specified by, and at the direction of the County.

Special Counsel will perform and render all legal services in connection with said certificate issue, including, but not limited to, the following:

- (a) Assist the COUNTY's financing team in the review and development of the Refunding Program.
- (b) Consult and confer with appropriate representatives of the COUNTY and its counsel ("County Counsel") and, as appropriate, other consultants to the COUNTY concerning the proposed Refunding Program and its timing, terms and structure, including considerations in relation to California law, Federal tax law, Federal securities law, and general public finance law as they affect the proposed Refunding Program.
- (c) Assist the financing team in the preparation of a timetable setting forth the actions required to accomplish the Refunding Program, including allocation of responsibility therefor.
- (d) Prepare all documents of a legal nature associated with the sale, execution and delivery of the Certificates (excepting the preliminary and final Official Statements, the notice of sale and the continuing disclosure certificate, each to be prepared by other members of the financing team), including preparation of resolutions, agreements, notices, affidavits, certifications and other documents associated with the Refunding Program.
- (e) Review, in consultation with other financing team members, the preliminary and final Official Statements, the continuing disclosure certificate and such other documentation as may be required to insure that the Certificates meet all legal requirements for a tax exempt status.
- (f) Prepare and issue Special Counsel's customary legal opinion approving the legality of the proceedings relating to the Refunding Program undertaken in accordance with Special Counsel's advice, including an opinion on the tax-exempt status of interest on the Certificates and an opinion as to the accuracy in all material respects of

the description of the financing documents and the summaries thereof included in the Official Statement; provided that Special Counsel will require a statement in the Official Statement to the effect that Special Counsel undertakes no responsibility for the accuracy, completeness or fairness of the Official Statement or other offering material relating to the Certificates and expresses no opinion with respect thereto.

(g) Review any insurance arrangements entered into with a provider of municipal bond insurance in connection with the Refunding Program.

(h) Review any notice of sale inviting sealed bids for the purchase of the Certificates.

(i) Examine the proofs of certificates, prepare the final closing papers required to effect delivery of the Certificates and organize and attend the certificate closing.

(j) Perform other services associated with the legality of a public financing program and the presentation of the program to the COUNTY'S Board of Supervisors when such services are requested by the COUNTY. This task would include, but not be limited to, appearances before the COUNTY Board at the meeting at which authorization of the Refunding Program is sought and participation in meetings and consultations with the financing team.

(k) Prepare and provide a complete transcript of the conduct of the proceedings constituting the Refunding Program for the use of the COUNTY.

Special Counsel and COUNTY acknowledge that County Counsel renders day-to-day and ongoing legal services to the COUNTY. Special Counsel shall circulate documents to and coordinate its services with County Counsel to the extent requested by COUNTY or County Counsel. Special Counsel shall be entitled to assume that County Counsel has reviewed all documents and matters submitted to the Board of Supervisors for adoption or approval or to officers of COUNTY for execution prior to such adoption, approval or execution, and Special Counsel shall submit documents in a timely manner to permit such review.

Sam Sperry shall be directly responsible for providing documents, advice, consultations, and other services specified above or requested by the COUNTY in connection with the issue. Other personnel will be made available as required.

Special Counsel's services are limited to those specifically set forth above. Special Counsel's services do not include representation of COUNTY or any other party to the transaction in any litigation or other legal or administrative proceeding involving any of the Certificates, the project or any related matter. Additionally, Special Counsel services do not include any responsibility for the preparation or content of the Official Statement (other than preparation of a summary of the major legal documents and a summary of the portion of the opinion to be rendered by Special Counsel concerning certain tax matters) or the preparation or content of the Certificate Purchase Agreement, if any. Special Counsel's services also do not include any responsibility for state blue sky laws or for title to perfection of security interests in real or personal property. Special Counsel's services do not include any financial advice or analysis. Special Counsel's will not be responsible for the services performed or acts or omissions of any co-certificate counsel or other participant. Also, Special Counsel's services will not extend beyond the execution and delivery of the Certificates and will not, for example, include services related to rebate compliance or continuing disclosure.

EXHIBIT B

PAYMENT FOR SERVICES RENDERED

Compensation for the foregoing services shall be as follows:

If the Certificates are issued before December 31, 2006, Special Counsel shall be paid a fee in the amount of \$40,000 for special counsel services. The fee shall increase by \$10,000 on January 1, 2007. If the Certificates are not issued by the end of 2007, the fee shall be subject to renegotiation. If insurance on the payment of principal and interest on the Certificates is obtained, the fee shall be increased by \$10,000. If the bond insurer, if any, requires an absolute assignment bankruptcy opinion from Special Counsel, the fee shall be increased by an additional \$10,000.

Expenses:

Special Counsel shall be reimbursed for any direct cash outlays made by them on behalf of the COUNTY, the cost of copying, postage and express delivery services, automobile travel (40 cents per mile) and related parking charges and bridge tolls and the expense of preparing closing transcripts. Out-of-pocket expenses shall not exceed \$5,000.

The fees referenced in this Exhibit B shall be payable from the proceeds of the Certificates, and the COUNTY shall have no obligation to make payment of such services from any other source of funds.

Pre-approved expenses to be reimbursed at cost with receipts required. Travel expenses (maximums paid for mileage rates, meals, hotel rates, etc.) to be reimbursed pursuant to County policy for County employees.

Total fees for services and expenses not to exceed \$75,000.00

Special Counsel shall submit monthly invoices to the County providing details of services rendered and expenses incurred. Invoices are due and payable within 30 days.

Invoices shall be submitted to County care of:

Jenine Windeshausen
Placer County Treasurer
2976 Richardson Drive
Auburn, CA 95603

EXHIBIT C
FACILITIES, EQUIPMENT, AND OTHER
MATERIALS, AND OBLIGATIONS OF COUNTY

The County has no obligation to provide facilities or equipment to Special Counsel.

The County will make all pertinent information and data available to Special Counsel as necessary to complete the work described in Exhibit A.

EXHIBIT D

GENERAL PROVISIONS

1. **Independent Contractor.** At all times during the term of this Agreement, Special Counsel shall be an independent contractor and shall not be an employee of the County. County shall have the right to control Special Counsel only insofar as the results of Special Counsel's services rendered pursuant to this Agreement. County shall not have the right to control the means by which Special Counsel accomplishes services rendered pursuant to this Agreement.

2. **Licenses, Permits, Etc.** Special Counsel represents and warrants to County that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for Special Counsel to practice its profession. Special Counsel represents and warrants to County that Special Counsel shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for Special Counsel to practice its profession at the time the services are performed.

3. **Time.** Special Counsel shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of Special Counsel's obligations pursuant to this Agreement. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

4. **Insurance.** Special Counsel shall file with County a Certificate of Insurance, with companies acceptable to County, with a Best's Rating of no less than A:VII showing the following coverage:

A. **Workers' Compensation and Employers' Liability Insurance**

1) Workers' Compensation Insurance shall be provided, as required, by any applicable law or regulation. Employers' liability insurance shall be provided in amounts not less than five hundred thousand dollars (\$500,000) each accident for bodily injury by accident, five hundred thousand dollars (\$500,000) policy limit for bodily injury by disease, and five hundred thousand dollars (\$500,000) each employee for bodily injury by disease.

2) Special Counsel shall require all subconsultants, if any (none anticipated), to maintain adequate Workers' Compensation Insurance. Certificates of Workers Compensation shall be filed forthwith with the County upon demand.

B. **General Liability Insurance**

1) Comprehensive General Liability or Commercial General Liability insurance shall be provided covering all operations by, or on behalf of Special Counsel,

covering bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for contractual liability insuring the obligations assumed by Special Counsel in this Agreement.

2) One of the following forms is required:

- a) Comprehensive General Liability;
- b) Commercial General Liability (Occurrence); or
- c) Commercial General Liability (Claims Made).

3) If Special Counsel carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:

- a) One million dollars (\$1,000,000) each occurrence;
- b) One million dollars (\$1,000,000) aggregate.

4) If Special Counsel carries a Commercial General Liability (Occurrence) policy:

- a) The limits of liability shall not be less than:
 - i) One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage);
 - ii) One million dollars (\$1,000,000) for Products-Completed Operations;
 - iii) One million dollars (\$1,000,000) General Aggregate.
- b) If the policy does not have an endorsement providing that the General Aggregate Limit applies separately to this contract, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be two million dollars (\$2,000,000).

5) Special Claims Made Policy Form Provisions:

Special Counsel shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of County, which consent, if given, shall be subject to the following conditions:

- a) The limits of liability shall not be less than:
 - i) One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage);
 - ii) One million dollars (\$1,000,000) aggregate for Products-Completed Operations;
 - iii) One million dollars (\$1,000,000) General Aggregate.
- b) The insurance coverage provided by Special Counsel shall contain language allowing Special Counsel to purchase coverage for up to six (6) months following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims made policy. And, Special Counsel

shall upon expiration of such coverage, either replace such coverage with comparable coverage or exercise such option.

C. Endorsements:

Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:

1) "The County of Placer, its officers, agents, employees and volunteers, are to be covered as insureds for all liability arising out of operations, or on behalf of, the additional insured in the performance of this Agreement."

2) "The insurance provided by the Special Counsel, including any excess liability or umbrella form coverage, is primary coverage to the County with respect to any insurance or self-insurance programs maintained by County, and no insurance held or owned by County shall be called upon to contribute to a loss."

D. Automobile Liability Insurance

1) Automobile Liability insurance shall be provided covering bodily injury and property damage in an amount no less than one million dollars (\$1,000,000) combined single limit for each occurrence.

2) Covered vehicles should include owned (if any are owned by Special Counsel), non-owned, and hired automobiles/trucks.

E. Professional Liability Insurance (Errors and Omissions)

1) Professional Liability Insurance for Errors and Omissions coverage shall be provided in the amount of not less than two million dollars (\$2,000,000) in aggregate.

2) The insurance coverage provided by Special Counsel shall contain language allowing Special Counsel to purchase coverage for up to six (6) months following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims made policy.

5. **Indemnity.** Special Counsel shall indemnify and hold harmless County from any and all damages or liability arising out of claims relating to the services set forth in this Agreement to the extent ultimately determined to have resulted from negligent acts or omissions, malpractice or intentional acts of Special Counsel in rendering the services set forth in this Agreement.

6. **Special Counsel Not Agent.** Except as County may specify in writing, Special Counsel shall have no authority, express or implied, to act on behalf of County in any capacity whatsoever as an agent. Special Counsel shall have no authority, express or implied, pursuant to this Agreement to bind County to any obligation whatsoever.

7. **Assignment Prohibited.** Special Counsel may assign its rights and obligations under this Agreement only upon the prior written approval of County, said approval to be in the sole discretion of County.

8. Personnel.

A. Special Counsel shall assign only competent personnel to perform services pursuant to this Agreement. In the event that County, in its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by Special Counsel to perform services pursuant to this Agreement, including those members of the Project Team as explained below, Special Counsel shall remove any such person immediately upon receiving notice from County of the desire of County for removal of such person or persons.

B. Notwithstanding the foregoing, if specific persons are designated as the "Project Team" in Exhibit A, Scope of Services, Special Counsel agrees to perform the work under this agreement with those individuals identified. Reassignment or substitution of individuals or subSpecial Counsels named in the Project Team by Special Counsel without the prior written consent of County shall be grounds for cancellation of the agreement by County, and payment shall be made pursuant to Paragraph 10 Termination only for that work performed by Project Team members.

9. Standard of Performance. Special Counsel shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Special Counsel is engaged in the geographical area in which Special Counsel practices its profession. All products of whatsoever nature which Special Counsel delivers to County pursuant to this Agreement shall be prepared in a substantial first class and workmanlike manner and conform to the standards or quality normally observed by a person practicing in Special Counsel's profession.

10. Termination.

A. County shall have the right to terminate this Agreement at any time by giving notice in writing of such termination to Special Counsel. In the event County shall give notice of termination, Special Counsel shall immediately cease rendering service upon receipt of such written notice, pursuant to this Agreement. In the event County shall terminate this Agreement:

1) Special Counsel shall deliver copies of all writings prepared by it pursuant to this Agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, Photostatting, photographing, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.

2) County shall have full ownership and control of all such writings delivered by Special Counsel pursuant to this Agreement.

3) County shall pay Special Counsel the reasonable value of services rendered by Special Counsel to the date of termination pursuant to this Agreement not to exceed the amount documented by Special Counsel and approved by County as work accomplished to date; provided, however, that in no event shall any payment hereunder exceed the amount of the agreement specified in Exhibit B, and further provided, however, County shall not in any manner be liable for lost profits which might have been made by Special Counsel had Special Counsel completed the services required by this Agreement. In this regard, Special Counsel shall furnish to County such financial information as in the judgment of the County is necessary to determine the reasonable value of the services rendered by Special Counsel. The foregoing is cumulative and does not affect any right or remedy which County may have in law or equity.

B. Special Counsel may terminate its services under this Agreement upon thirty (30) working days advance written notice to the County.

11. Non-Discrimination. Special Counsel shall not discriminate in its employment practices because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex in contravention of the California Fair Employment and Housing Act, Government Code section 12900 et seq.

12. Records. Special Counsel shall maintain, at all times, complete detailed records with regard to work performed under this agreement in a form acceptable to County, and County shall have the right to inspect such records at any reasonable time. Notwithstanding any other terms of this agreement, no payments shall be made to Special Counsel until County is satisfied that work of such value has been rendered pursuant to this agreement. However, County shall not unreasonably withhold payment and, if a dispute exists, the withheld payment shall be proportional only to the item in dispute.

13. Ownership of Information. All professional and technical information developed under this Agreement and all work sheets, reports, and related data shall become the property of County, and Special Counsel agrees to deliver reproducible copies of such documents to County on completion of the services hereunder. The County agrees to indemnify and hold Special Counsel harmless from any claim arising out of reuse of the information for other than this project.

14. Waiver. One or more waivers by one party of any major or minor breach or default of any provision, term, condition, or covenant of this Agreement shall not operate as a waiver of any subsequent breach or default by the other party.

15. Conflict of Interest. Special Counsel certifies that no official or employee of the County, nor any business entity in which an official of the County has an interest, has been employed or retained to solicit or aid in the procuring of this agreement. In addition, Special Counsel agrees that no such person will be employed in the performance of this agreement without immediately notifying the County.

16. **Entirety of Agreement.** This Agreement contains the entire agreement of County and Special Counsel with respect to the subject matter hereof, and no other agreement, statement, or promise made by any party, or to any employee, officer or agent of any party which is not contained in this Agreement shall be binding or valid.

17. **Attorney's Fees.** If any party to this Agreement commences legal proceedings to enforce any of its terms or for damages for its breach, the prevailing party shall be entitled to recover reasonable attorney's fees, including those incurred on appeal, if any.

18. **Governing Law.** This Agreement is executed and intended to be performed in the State of California, and the laws of that State shall govern its interpretation and effect. Any legal proceedings on this agreement shall be brought under the jurisdiction of the Superior Court of the County of Placer, State of California, and Special Counsel hereby expressly waives those provisions in California Code of Civil Procedure §394 that may have allowed it to transfer venue to another jurisdiction.